

Testimony of

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Regarding

Nonimmigrant Overstays

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Subcommittee on Immigration and Claims

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Mr. Chairman and Members of the Subcommittee, I welcome the opportunity to testify on the issues concerning nonimmigrant aliens who enter legally but subsequently fail to depart when their authorized stay expires.

My testimony today will cover Immigration and Naturalization Service's (INS' or Service's) inspection workload and where and how that workload is processed.

We will cover the difficulty in collecting data on nonimmigrants and the steps the Service has taken and is taking to address this difficulty.

The testimony will describe INS current arrival and departure data collection processes at our air, land and sea Ports-of-Entry.

You will hear about our automated I-94 entry-exit pilot program. We will describe the pilot's results to date and how expanding the program can further the capture of reliable entry and exit data.

I will describe INS' Interior Enforcement Strategy – one that is multi-faceted and that attacks the problem of illegal aliens, including nonimmigrants who overstay, in various ways.

We will also address additional INS initiatives. These initiatives are designed to address the problem of nonimmigrant overstays and illegal immigration. Included will be



information on promising automated inspection systems that use state-of-the-art technology, such as biometrics.

Before I continue, I would like to thank you and the members of the subcommittee for your support. We look forward to working with you in the future to help address the nation's important immigration issues.

The INS inspects over 500 million persons at over 200 air, land and sea ports-of-entry. Of those admitted, almost two thirds are noncitizens. About 85 percent of these visitors enter at our land border Ports-of-Entry, reflecting the close social and economic ties we share with Canada and Mexico, and the relative ease of international business and pleasure travel to the United States.

Nonimmigrant aliens who enter legally but overstay their authorized period of admission constitute a relatively small percentage of the millions of people who visit the United States annually. However, while this annual percentage is small, it constitutes a significant portion (approximately 40 - 50%) of the estimated illegal alien population in the United States, with the remaining portion being aliens who have entered the United States without inspection.

Identifying the number of nonimmigrant overstays has proven difficult and has been the subject of much concern both from within and outside the INS. Inspection procedures and collection of arrival and departure information on aliens differ



substantially at land Ports-of-Entry (POEs) from air and sea POEs. Historically, the INS has used Form I-94 to collect arrival and departure information on aliens. The I-94 Form also serves to document an alien's status while in the United States. In 1983, the INS created the Nonimmigrant Information System (NIIS) as an automated system of arrival and departure records and the I-94 has been the means for providing information to that system.

### **Arrival Data Collection**

### **Land Border POEs**

The INS issues I-94s to all nonimmigrants with the exception of certain visitors for whom the visa requirements have been waived. Mexican visitors who are Border Crossing Card (BCC) holders and who cross the United States - Mexican border for less than 72 hours do not receive an I-94. If Mexican BCC holders plan to travel beyond 25 miles of the Mexican border or to stay longer than 72 hours, they can apply to INS for issuance of a Form I-94 which may be used multiple times and is valid for six months.

The Congress of the United States has instructed the Attorney General to develop an entry-exit control system for the land border. Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 set the parameters for such a system and Section 116 of the Omnibus Budget Bill, PL 105-277 extended the deadline for developing the system for land borders and seaports until March 30, 2001. The system



that is developed must not significantly disrupt trade, tourism, or other legitimate cross-border traffic at land border Ports-of- Entry.

### **Air and Sea POEs**

Historically, the U.S. law has required transportation companies to assist the INS in the process of recording the arrival and departure of aliens entering the United States by air or sea. Requirements for transportation companies to provide passenger manifests and take responsibility for assuring that alien passengers and crew are properly documented date back to the beginning of this century. Sections 231 (passenger manifest requirements) and 252 (crew manifest requirements) of the INA have been in their current form since 1952. In general, transportation companies are required to provide information on all passengers and crew arriving in, and departing from the United States from foreign territory. Certain exceptions are made for carriers operating from a contiguous territory.

### **Departure Data Collection**

The United States has never had a formal system of departure inspection. Instead, the INS has relied on the transportation companies (air and sea carriers) to assume most of the responsibility for the collection of departure information. As with arrival manifest requirements, under Section 231 of the INA, carriers are required to collect the Departure Form I-94s for passengers departing the United States by air or sea and forward the forms



to the INS office at the POE. Nonimmigrants departing the United States via the Canadian or Mexican land borders are requested to return the Departure Form I-94s to the U.S. or Canadian/Mexican inspectors at departure. Those collected by the Canadian officials are returned to the INS office at the POE. In all cases, the INS office forwards all the forms to the data entry contractor for entry into NIIS. Arrival and departure information are matched through the unique admission number, which appears on both the arrival and departure sections of the Form I-94.

In response to changing, and sometimes conflicting, demands for facilitation and control at air POEs, the INS has, by regulation, modified the manifest requirements over time. Under procedures developed to facilitate travel to the United States, the INS exempted certain classes of aliens from the manifest requirements.

### **Data Integrity and Completeness**

#### **Data Completeness**

Since no arrival and departure data is currently collected on the great majority of Mexican and Canadian citizens, INS only collects arrival and departure data on approximately 10% of foreign visitors. In addition, since the INS does not operate departure inspection stations at the borders, the collection of departure data on nationals of other countries who leave the United States via the Canadian and Mexican borders depends entirely upon the alien's voluntarily returning the Departure Form I-94 to a



border official. Those departing the United States by air or sea are required to return the forms to the airline or shipping agent. Because of these manual procedures, the potential for lost forms exists.

### **Data Integrity**

Since the collection of arrival and departure data is currently done by means of a manually completed form usually filled out by the traveler for subsequent entry into NIIS by a data entry contractor, biographical information on either or both the arrival and departure portions may be illegible or inconsistent. Statutory requirements, such as the 45 minute inspection time contained in Section 286 of the INA, and industry demands for facilitation have resulted in the INS focusing the limited inspection time on establishing the alien's admissibility. Currently, passengers on over 99% of international flights are inspected within the 45-minute requirement.

The NIIS data entry process further compounds the problem with data integrity. Increases in the volume of arrival and departure forms have led to increasing numbers of keying and data errors which affect the system's ability to accurately match arrival and departure records. Over 50 million arrival and departure forms were data entered in FY 1998 at a cost of over \$21 million. Efforts to improve the quality of the data in NIIS, by rejecting records containing substantial errors and applying stringent matching criteria, have also adversely affected the system's arrival/departure match rate. All of this has



affected INS' ability to identify nonimmigrants that have overstayed their permission to remain in the United States.

The latest nonimmigrant data available for evaluation on overstays are for fiscal year 1997. The apparent overstay rates for this period continue to be significantly higher than the most recent reliable rates observed in fiscal year 1992 data. Current data also show a high degree of fluctuation in apparent overstay rates by nonimmigrant class, month, and country of admission that renders the data incompatible with the assumptions used in the overstay methodology.

### **Corrective Action**

Since 1997, the INS has taken significant steps to improve NIIS; the system has been examined and problems identified. An Oversight and Maintenance Group has been established to continue to monitor the system. Data entry procedures have been scrutinized and significant changes made.

INS produced and distributed Easy Come, Easy Go, a booklet for carriers. This guidance stresses the importance of the completion and forwarding of forms I-94, I-94W, I-94T, and I-92. In May of 1998, the Office of Inspections provided field guidance, which detailed the proper procedures for processing I-94s. In January of 1999, the Office of Inspections reiterated these instructions in a wire to our field components. The intent of these actions is to improve the processing and handling of arrival and departure records.



The Service does have the authority to fine carriers under Section 231 of the Act when arrival and departure forms are not properly processed. A notice of proposed rulemaking is being prepared to amend section 231 of Title 8 of the Code of Federal Regulations and to delineate criteria and procedures for imposing fines pursuant to 231(d) of the Act for failure to submit a properly completed arrival or departure manifest.

While the aforementioned steps are aimed at improving the current system of collecting arrival and departure data, the Service believes if we are ever to achieve an effective and accurate arrival and departure system, we would need the automated collection of arrival data at the time of inspection, the issuance of a machine-readable departure card, and the automated collection of departure data at the time of departure. In addition, the enactment of the Immigration Reform and Illegal Immigration Control Act (IIRIRA) of 1996, has strengthened those sections of the INA which address the entry and collection of arrival and departure information of aliens and required the INS to reassess current procedures regarding both manifest requirements and the practical implications of certain conditions of the Visa Waiver Pilot Program as currently implemented.

### **Automated I-94 System**

Included in the FY 1996 Appropriations Act<sup>1</sup>, Congress requested that the Attorney General submit a plan and timeline not later than February 1, 1997, for the

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<sup>1</sup>House Committee on Appropriations, Report on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Bill, Fiscal Year 1997, H. Rep. 104-676 (July 16,



Immigration and Naturalization Service's (INS) pilot project on the automated collection of arrival and departure information. The INS submitted a report on the Automated I-94 Pilot Project, a cooperative effort between the INS and US Airways. This pilot began in May 1997, 4 ½ months before the mandated start date.

The INS developed the automated Form I-94 pilot program to apply current technology to the collection of arrival and departure information in a controlled environment. Consistent with the projections made in the June 1996 report, the pilot took place at one U.S. and one foreign airport and involved one air carrier. In order to ascertain the airline industry's interest and seek its cooperation in piloting the program, the INS distributed the pilot project proposal to industry representatives. US Airways was the only carrier that responded to the proposal and expressed interest in participating in the pilot program. After reviewing possible U.S. and foreign airports and flights for the automated Form I-94 pilot project, the INS and US Airways selected the Munich - Philadelphia route.

The INS/US Airways pilot worked in the following way. US Airways check-in agents, utilizing magnetic stripe technology, produced a machine-readable Arrival Form I-94 along with the machine-readable boarding pass, which they currently printed. The passenger presented the Arrival Form I-94 to the immigration inspector upon arrival in Philadelphia. Upon arrival in the United States, the automated Arrival Form I-94 was

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1996), page 33; see Joint Explanatory Statement of the Committee of Conference, Conference Report to Accompany H.R. 3610, Making Omnibus Consolidated Appropriations for Fiscal Year 1997, H. Rep. 104-863 (Sept. 28, 1996), page 789.



used to create an arrival record, which was uploaded directly to NIIS daily. For the first time, accurate arrival information was available within 24 hours of the passenger's arrival. A machine-readable Departure Form I-94 was given to the passenger to surrender to the airline agent upon departure from the United States.

The US Airways staff at Philadelphia collected the Departure Form I-94s during the boarding process. Upon receipt of these forms from US Airways, the INS staff at the airport read them into the system to be uploaded directly to NIIS daily. For the first time, departure information was available within 24 hours.

### **Automated I-94 Equipment Deployment**

The system was deployed at Philadelphia in FY 1997. FY 1998 funds were used to acquire equipment for an additional 17 airports; the system's infrastructure was deployed at 12 airports in FY 1998 and at the remaining 5 in FY 1999. In FY 1999, equipment will be procured for an additional 20 airports. The INS plans to deploy the system to 30 additional airports in both FY 2000 and FY 2001.

### **Results**

The pilot began on May 14, 1997 and continues to run. At the Philadelphia airport, INS is now able to report on and analyze matched entry and exit data for alien travelers using flights that participate in the program.



The results as of December 21, 1998: 51,023 records of departures through the pilot program. Only 127 departure records did not match the automated entry record. **This is a match rate of 99.8 percent.** The non-matches include people whose electronic form did not work and computer error (e.g. a character on the card could not be read accurately). Of these matched entry-exit records, INS can achieve for the first time a reliable count of a subset of an overstay population. Albeit in limited scale, the Pilot shows that of the 50,896 matched entry-exit records, 99.6 percent did not overstay. The 214 records for whom INS confirmed an overstay equaled 0.4 percent of all alien travelers who departed the U.S. through the pilot program.

The INS is now analyzing these overstay records to design procedures for follow-up and enforcement. The follow-up will contribute to the ongoing work with the Department of State so that consulates can be informed about a traveler's former overstay behavior. In addition, INS investigations will work on identifying patterns of visa abuse that could lead to enforcement actions. The follow-up will develop in sophistication and impact as more flights at more airports begin to provide matched entry-exit data to the Service.

The figures on overstays above do not represent a true overstay rate, as INS defines and estimates them. The true rate would be significantly higher. The reason is that not all visa holders exit the United States at Philadelphia on a pilot flight. They leave through other airports or across the land border and are not enrolled in the database. This



is a limitation that presents itself in any pilot program but it will be increasingly overcome as the pilot expands.

The critical issue now involves airline cooperation. US Airways, the test airline, has been cooperating and now includes all of its European operations. TWA is just beginning to work with the Service at the St. Louis airport. The INS continues to explore possibilities with other airlines. The INS is exploring whether to build a phased-in approach to making enrollment mandatory. We believe that future use of the entry-exit system will reduce airlines' exposure to fines that result from transport of persons with improper documentation.

The Automated I-94 System is the front-end to the INS' new Arrival/Departure Information System (ADIS) at air Ports-of-Entry (POEs).

### **Arrival/Departure Information System (ADIS)**

The ADIS has been designed to meet the mandate for the development of the automated entry/exit control system under section 110 of IIRIRA. It has been designed to:

Collect a record of arrival and departure for every alien;

Match a record of departure with an arrival record;

Identify non-immigrant overstays and provide that information to Ports-of-Entry (POEs) and the Department of State (DOS).



Although, it appears to be similar in function to NIIS, ADIS has been designed to handle a significantly larger number of records than NIIS and could provide for the electronic transfer of arrival and departure information for the POEs, regardless of the method used to collect the data (i.e. other automated inspection systems such as INSPASS). ADIS could replace NIIS and its interfaces with other INS systems when all POEs are equipped to transmit arrival and departure information electronically. Until then, ADIS will transmit nonimmigrant arrival and departure information to NIIS so that current NIIS interfaces with the Central Index System (CIS) and the National Automated Immigration Lookout System (NAILS) can be utilized. Additionally, information on Visa Waiver Pilot Program (VWPP) participants will continue to be passed to NAILS, enabling the interception at POEs of VWPP applicants who have previously overstayed.

### **Visa Waiver Pilot Program**

I would like to turn to the Visa Waiver Pilot Program (VWPP). The VWPP eases travel for millions of travelers. A valid passport is all that is required for the nationals of 26 countries in order to visit the United States for business and pleasure. Approximately 50 percent of all documented nonimmigrants enter through the VWPP. The removal of a need to apply for a nonimmigrant visa at an American Embassy or Consulate abroad has saved both the traveling public and the U.S. Government time, money and effort. However, the number of refusals of admission continues to increase as the program expands. It is also becoming more difficult to detect travelers who intend to remain in the United States beyond their 90-day admission period. Organized criminal elements



realize that elimination of the nonimmigrant visa application process facilitates entry into the United States - for both bonafide and malafide entrants. The Service is seeing expanded use of genuine stolen passports from VWPP countries. The Inspector's challenge is great - sift out imposters using genuine documents during the brief period allotted for primary inspection.

### **Addressing the Nonimmigrant Overstay Problem**

The INS has previously testified that the economic lure of the United States is the main reason illegal aliens stay in the United States, including nonimmigrant overstays. Many committees and commissions, such as the Jordan Commission, have concurred. I would like to describe several initiatives and strategies that the Service is using and will be exploring to make it more difficult for aliens to enter, remain and work in the United States.

### **Interior Enforcement Strategy**

The INS' approach to interior enforcement is designed to deter illegal migration, prevent immigration-related crimes and remove individuals, especially criminals, who are unlawfully present in the United States. Concerning deterring illegal migration, INS proposes to strengthen overseas deterrence programs, for instance increased INS presence overseas (i.e. Operation Global Reach) and increased carrier consultant training. Interception of aliens before entry into the United States has a dual benefit of decreasing



the number of illegal aliens in the United States and driving up the cost for those, including organized criminal rings, intent on entering the United States. In addition, INS will increase international efforts to disrupt the criminal fraudulent document infrastructure overseas through a program of joint information sharing and investigation with source and transit countries.

As a result of legislation, INS has moved in meaningful ways to respond to community reports and complaints of illegal aliens, again close to 50 percent being nonimmigrant overstays. The INS has placed law enforcement officers in every state across the country to respond to local community issues and needs. The INS intends to place officers in designated locations as Quick Response Teams to respond to the impact of illegal aliens on local law enforcement. The INS Law Enforcement Service Center (LESC) responds to 7 to 8 thousand queries a month from local law enforcement officials. The INS officers are involved in a wide variety of joint investigation and task force projects involving other federal, state and local agencies, targeting the criminal activity of illegal aliens.

### **Penalties for Nonimmigrant Overstays**

The INS employs a graduated set of controls and penalties for aliens who may potentially or have in fact abused the conditions of their visas. A maintenance of status and departure bond can be required when there are significant questions about a nonimmigrant's intent or ability to support himself or herself while here. This tool is used sparingly; however, because tracking of bond cases and remission of bonds generate



extensive administrative requirements. The INS is also using its authority for expedited removals at its Ports-of-Entry. This mechanism not only stops the entry of a potential nonimmigrant overstay, it creates a bar for certain immigration benefits. Nonimmigrant visas are cancelled and the information pertaining to the alien is forwarded to the Department of State for entry into its lookout system. The information is also placed in INS lookout databases.

The Service has the authority to fine an alien for failure to carry proof of alien registration, such as an alien registration card or I-94, if a nonimmigrant.

### **Additional INS Initiatives**

Additional INS initiatives designed to attack illegal immigration are: worksite enforcement, immigration status verification, fraud resistant documentation, removal of illegal aliens, the immigration agent position and introduction of the Passenger Analysis Units.

### **Worksite Enforcement**

The INS believes that the employer plays a crucial role in creating an effective deterrent to illegal migration. The majority of the people who overstay do so to work. Therefore, efforts that reduce the magnet of job opportunities for illegal migrants have a profound effect. Worksite enforcement is such an effort. The program builds relationships with employers, openly conducts audits and surveys, invites employer



cooperation, and continues to work with employers well after unauthorized workers, including nonimmigrant overstays, are removed to ensure continued compliance with immigration laws. The INS identifies and targets non-compliant employers based on institutional experience and current data. Egregious violators can be criminally investigated and prosecuted.

### **Immigration Status Verification**

Liaison continues with the Social Security Administration concerning the sharing and matching of SSA and INS data. Our immigration status verification program continues with status information making it easier for employers to ensure they are maintaining a legal workforce and for agencies to verify eligibility for benefit programs.

### **Fraud Resistant Documentation**

The INS continues its strategy of developing more fraudulent resistant documentation. The new I-551 card is an example. This technology is exportable and can be used for nonimmigrant documentation, such as, border-crossing cards used by nonimmigrant border crossers. The state of the art use of technology including biometrics offers much promise. The Service's automated inspection systems are illustrative.



## **INSPASS**

The INS Passenger Accelerated Service System (INSPASS) is an automated system that can significantly reduce immigration inspection processing time for authorized travelers and allows inspections to be better utilized in screening high-risk passengers. INSPASS combines automation with a hand geometry biometric image to validate the claimed identity on an individual. The INSPASS card contains not only a photograph of the bearer but also a fingerprint. The fingerprint of the bearer is captured during the application process, digitized and made a part of the data record for that individual. The bearer of the card places her or his hand on a reader plate and a match is made of the bearer's handprint with the handprint in the database. Through December 1998, more than 80,000 frequent travelers enrolled in or renewed their INSPASS enrollment, and there are presently over 40,000 active participants. More than 300,000 admissions have been made at INSPASS kiosks since 1995. Immigration Inspectors have conducted more than 10,000 compliance checks of INSPASS admitted persons with no fraud found.

## **Remote Video Inspection System (RVIS)**

The INS and USCS have initiated the RVIS program along the northern border. The system is placed at low-volume, small, remote POEs that were only open for limited hours to extend their hours of operation. Inspectors from both agencies are able to remotely inspect travelers at the RVIS POE using interactive video, surveillance and



control equipment. A traveler enrolled for this program is issued a card, which is swiped through a card reader. If the card is valid and there are no alerts, the system instructs the traveler to proceed into the United States. If the card is invalid or expired, or if there are any alerts, the system prompts the inspector to continue the inspection manually.

### **Secure Electronic Network for Traveler's Rapid Inspection (SENTRI)**

The SENTRI program is an electronic, dedicated commuter lane that enhances the flow of low risk frequent border crossers through a Port-of-Entry while maintaining the security and integrity of our borders. The system uses a pre-enrollment process and the PORTPASS card coupled with a vehicle-mounted electronic transponder to improve the inspection process and provide a predictable wait time for entry into the United States. An inspector reviews the information that appears on the computer monitor, and if no lookout information appears, the vehicle and driver are allowed to proceed. Automated inspection systems such as SENTRI and RVIS have the potential for electronic capture and transmission of entry, and possibly exit data.

### **Removal of Illegal Aliens**

Removal of illegal aliens, especially criminal aliens remains a high priority. The Institutional Hearing Program (IHP) efficiently channels criminal aliens for INS processing and hearings while they are still incarcerated. The size of the criminal alien population is substantial. The INS estimates that approximately 221,000 foreign-born



residents are currently incarcerated in Federal, state, or local facilities. Nearly two-thirds entered the country without inspection. An additional 32.5 percent are legal immigrants who have committed a crime, while 2.5 percent are aliens who have overstayed their visas. Our Detention and Deportation Program prioritizes its resources for detention and removals to comply with legal mandates. The top two priorities are criminal aliens and those who are a flight risk. These two categories of aliens exhaust most of our detention space. Overstays are in a third priority, joining those in the category of unlawfully present in the United States, and are generally not detained. In FY 1997, INS removed almost 8,000 overstays, in FY 1998, almost 8,500.

### **Immigration Agent Position**

The INS no longer uses special agents to perform the more routine but highly important interior enforcement work. The immigration agent position was established several years ago to free special agents from this work so that they can perform more complex casework. The immigration agents reduce illegal employment opportunities through conducting workplace compliance inspections and administrative sanctions cases, and processing aliens for removal proceedings.

### **Passenger Analysis Units**

The Passenger Analysis Unit (PAU) is an initiative with the potential for success against nonimmigrant overstays. The PAUs have been strategically placed at several of



our air Ports-of-Entry. Since their inception, PAUs have contributed to the inventory of intelligence information available to Immigration Inspectors. Inspectors take the names, document numbers and other vital information about incoming air passengers obtained from air carriers and check these data against arrival and departure systems. As a result, probable immigration offenders are identified before they arrive in the United States. Overstays are particularly amenable to this type of intelligence collection, in that our Nonimmigrant Information System (NIIS) will give an Inspector a rough idea of an arriving passenger's travel patterns, including overstay indicators like lengthy stays or small gaps between entries. If an incoming passenger displays these or similar indicators, the passenger is identified as a possible offender prior to arrival and is flagged for more intense inspection. When combined with an Inspector's actual findings, this type of lead information often enables us to initiate an enforcement action against an overstay who otherwise may not have raised anyone's suspicion.

## **Conclusion**

In conclusion, INS has taken steps to improve its data on nonimmigrant entry and departure while recognizing that most nonimmigrant arrivals are not recorded. The INS continues to attack illegal immigration with numerous initiatives and strategies. The initiatives and strategies are designed to deter entry of potential illegal aliens, create obstacles for illegal aliens to remain and work in the United States, and effectively remove illegal aliens from the United States.



Thank you for your attention and I am pleased to answer any questions.